

MF 01-9

Tax Type: Motor Fuel Use Tax

Issue: Off-Highway Usage Exemption

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 00-ST-0000
v.)	IBT # 00-0000000
)	
ABC & CO., INC.)	Claim for Credit or Refund
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Synopsis:

The Department of Revenue ("Department") issued a letter denying a claim for a motor fuel tax refund filed by ABC & Co., Inc. ("taxpayer"). The claim requested a refund of taxes paid on undyed diesel fuel used for off-highway purposes for the period of January 2000 to July 2000. The taxpayer timely protested the Department's denial of the claim. The taxpayer waived its right to an evidentiary hearing and requested that this matter be decided based on written submissions by the parties. After reviewing the documentation presented, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer filed a claim for a refund of tax paid on undyed diesel fuel for off-highway purposes for the period of January 2000 to July 2000. (Dept. Ex. #1)

2. The undyed diesel fuel for which the taxpayer requests the refund was used in the following equipment: backhoes, excavators, compressors, pavers, loaders, rollers, compactors, graders, dozer. (Dept. Ex. #1)

3. On August 24, 2000, the Department issued a letter to the taxpayer that denied the taxpayer's claim in the amount of \$776.80 for motor fuel tax paid on the fuel used in the equipment. (Dept. Ex. #2)

CONCLUSIONS OF LAW:

Section 13 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), provides in part as follows:

“Any person other than a distributor or supplier, who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under Section 2 of this Act) for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid. ***

No claim based upon the use of undyed diesel fuel shall be allowed except for undyed diesel fuel used by a commercial vehicle, as that term is defined in Section 1-111.8 of the Illinois Vehicle Code, for any purpose other than operating the commercial vehicle upon the public highways and unlicensed commercial vehicles operating on private property.” (35 ILCS 505/13)

Section 1-111.8 of the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.*) provides the following definition of commercial vehicle:

“Any vehicle operated for the transportation of persons or property in the furtherance of any commercial or industrial enterprise, For-Hire or Not-For-Hire, but not including a commuter van, a vehicle used in a ridesharing arrangement when being used for that purpose, or a recreational vehicle not being used commercially.” (625 ILCS 5/1-111.8)

The taxpayer used the undyed diesel fuel in its construction equipment, and argues that because the fuel was used for off-highway purposes, the taxpayer is entitled to a refund of the tax

paid. The taxpayer notes that the provision in section 13 that limits claims for undyed diesel fuel was added to the Act effective January 1, 2000. The taxpayer admits that it received a notice from the Department concerning the change in the statute (Taxpayer Ex. #1), but argues that the notice did not specifically state that the taxpayer's current method of receiving a refund would be eliminated. The taxpayer states that it did not clearly get the message regarding the change in procedure.

Although the taxpayer may not have clearly understood the change in the law, this is not a sufficient reason for not following the law. The Act states that no claim based upon the use of undyed diesel fuel shall be allowed except for fuel used by a commercial vehicle. Even though the vehicles were used off-highway, they must meet the definition of commercial vehicle before a claim can be allowed for undyed diesel fuel used in them.

The Department argues that the taxpayer's equipment does not qualify for the refund because the items are not commercial vehicles. The Department states in its brief that commercial vehicles include vehicles such as buses, dump trucks, concrete trucks, and tractor-trailers. The Department contends that all of the equipment at issue was used "for the manipulation of earth and materials necessary for highway construction, and are not operated for the transportation of persons or property." (Dept. brief p. 2)

The equipment used by the taxpayer does not fall within the definition of commercial vehicle. Although loaders and backhoes at first glance may appear to fit within the definition because they are generally used to transport property from one place to another, the term "vehicle" under the Vehicle Code is defined as a device by which property may be transported upon a highway. 625 ILCS 5/1-217. Loaders and backhoes are not used on highways and are

therefore not commercial vehicles. The remaining equipment also is not included in the definition.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's claim be denied.

Linda Olivero
Administrative Law Judge

Enter: March 15, 2001